

GLEN W. TAYLOR

IBLA 82-996

Decided October 8, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting the recordation of mining claim location notices and declaring the unpatented mining claims abandoned and void. N MC 117127 through N MC 117338.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 20, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM and the accompanying check for the filing fees is dishonored by the bank, the uncollectable check constitutes nonpayment of the filing fees.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by 43 CFR 3833.1 and to pay the requisite service fee within the proper time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

APPEARANCES: Glen W. Taylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Glen W. Taylor appeals from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated June 7, 1982, which rejected the filing submitted by appellants and held the mining claims, N MC 117127 through N MC 117338, 1/ abandoned and void because the check tendered in

1/ The mining claims are as follows:

McMahon #1 & #2	N MC-117127 thru N MC-117128
Ponderosa #1 thru #9	N MC-117129 thru N MC 117137
Snake Creek #1 thru #10	N MC-117138 thru N MC 117147
Weaver Creek #1 thru #10	N MC-117148 thru N MC 117157
Black Horse #1 thru #10	N MC-117158 thru N MC 117167
Old West #1 thru #10	N MC-117168 thru N MC 117177
Diamond Point #1 thru #10	N MC-11718 thru N MC 117187
Cedar Glen #1 thru #10	N MC-117188 thru N MC 117197
Old Mill #1 thru #10	N MC-117198 thru N MC 117207
Hill Top #1 thru #6	N MC-117208 thru N MC 117213
Cold Gold Creek #1 thru #5	N MC-117214 thru N MC 117218
Mare Lea	N MC-117219
Modern #1 thru #4	N MC-117220 thru N MC 117223
April #1 thru #13	N MC-117224 thru N MC 117236
Faith #1 & #2	N MC-117237 & N MC 117238
Nancy #1	N MC-117239
Blue Nugget	N MC-117240
Florence	N MC-117241
Gold Nugget #3 & #4	N MC-117242 & N MC 117243
Judith #1 thru #4	N MC-117244 thru N MC 117247
Pat #1 thru #3	N MC-117248 thru N MC 117250
Mary J	N MC-117251
Mary J #1 thru #3	N MC-117252 thru N MC 117254
Golden Era	N MC-117255
Cedars	N MC-117256

payment of a mining claim recording fee was dishonored by the bank on which it was drawn. The BLM decision further stated that rejection by the bank of a check as uncollectable requires rejection of the filing, absent a statement by the bank that its actions were erroneous. Regulations found in 43 CFR 3833.1-2(d) state that each claim or site shall be accompanied by a one time nonreturnable service fee. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee within the prescribed time frame. An uncollectable check constitutes nonpayment of the required service fee.

The claims were located at various times prior to October 21, 1976, and copies of notices of location were filed with BLM on October 18, 1979. A check for the requisite filing fees accompanied the filing. However, it was returned by the bank as uncollectable. The record indicates that BLM notified appellant by letter dated November 9, 1979, that the check was returned by the bank as uncollectable and that it should be replaced by "cashier's or certified check, bank draft or money order." Appellant replaced the returned check with a cashier's check on February 13, 1980.

On appeal, appellant argues that, when the replacement check was sent, nothing was said to indicate that the claims should be refiled. Appellant also states that

[h]ad your office informed us about the problem, we could have relocated the claims prior to being overstaked. However due to the fact that you waited over 3-1/2 years to notify us, and had stated all through that period that the claims were in good standing, your decision to reject the claims at this late date, even though all requirements have been met is very unfair.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, requires the owner of an unpatented mining claim located on or before October 21, 1976, to file with the proper office of BLM, on or before October 22, 1979, a copy of the official record of the notice of location.

[2] The applicable regulation, 43 CFR 3833.1-2(d), states that a location notice for each mining claim shall be accompanied by a service fee.

fn. 1 (continued)

Defiance	N MC-117257
Defiance #1	N MC-117258
Deer Trail	N MC-117259
Deer Trail #1 thru #19	N MC-117260 thru N MC 117278
Ohio Springs #1 thru #8	N MC-117279 thru N MC 117286
Big Pine #1 thru #10	N MC-117287 thru N MC 117296
Board Creek #1 thru #8	N MC-117297 thru N MC 117304
Willard Creek #1 thru #29	N MC-117305 thru N MC 117333
Com Surprise #1 thru #5	N MC-117334 thru N MC 117338

It further provides that a notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981); William Scott Olsen, 65 IBLA 274 (1982).

[3] 43 CFR 3833.4 provides that failure to file any instrument required by FLPMA within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void. This Board has no authority to excuse lack of compliance. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Since appellants' check dated October 18, 1979, was dishonored by the bank, the recordation of the documents was not accompanied by the requisite fee. February 13, 1980, the date BLM received the cashier's check for the filing fees, is the effective date of recordation. However, that date is more than 3 months after October 22, 1979, which is the deadline for the recordation of all mining claims located prior to October 21, 1976, as were appellants'. Therefore, BLM properly declared appellant's mining claims abandoned and void in accordance with FLPMA and 43 CFR 3833.4.

Appellant states that he received notice from BLM requesting additional evidence and indicating that affidavits of assessment work for the claims were necessary. Appellant also stated that a BLM employee told him that the claims were in good standing. This, appellant argues, in addition to the fact that BLM neglected to notify him for 3-1/2 years, makes BLM's action to reject the claims unfair. We regret that BLM did not immediately notify appellant that the initial filing of copies of location notices were rejected, but that unfortunate omission is no ground for estopping the Government where mandatory requirements of a statute are not met. "[T]he authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delay in the performance of their duties. 43 CFR 1810.3(a) * * *." Harold E. Woods, 61 IBLA 359, 362 (1982); Lynn Keith, *supra*.

Appellant was notified by BLM letter dated November 9, 1979, that the check was dishonored by the bank. Thus, he was aware in a timely manner that the requisite service charge did not accompany the location documents. Therefore, the regulation required rejection of them. Appellant should have been aware of this regulation as "all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations." Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Harold E. Woods, *supra*; Dennis M. Joy, 66 IBLA 260 (1982). Therefore, we find appellant's claim of estoppel without merit, and hold that BLM properly declared his mining claims abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

